In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 470

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GEORGE LEONIDAS, PETITIONERS

v.

NATIONAL MEDIATION BOARD, ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL MEDIATION BOARD AND ITS MEMBERS IN OPPOSITION

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1. In March 1965, after many disputes dating from 1937 between petitioner union (the Teamsters) and respondent union—the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the Railway Clerks)—concerning representation of Railway Express Agency, Inc. (REA) employees, the Railway Clerks requested the National Mediation Board to certify them as the exclusive representative of approximately 36,000 REA employees in a craft or class denominated "Clerical, Office, Station and Storehouse Employees" (J.A.

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21–25, 114–131, 138–139).[1] That craft included, among others, all REA employees previously represented by the Teamsters (J.A. 30–37). The Teamsters were notified immediately of the application, and about three weeks later their president interposed various objections to the application and urged its dismissal (J.A. 31, 33–34). The Railway Clerks replied to the Teamster's objections, and a mediator was assigned to investigate the dispute. The Teamsters requested a formal hearing on their objections, and the Board held the hearing in May 1965 (J.A. 35–39). On September 8, 1965, the Board rendered an extensive opinion, with findings and conclusions on the various issues involved. The Board concluded that a mediator should conduct an election for the single craft denominated by the Railway Clerks (J.A. 30–73).

On September 24, 1965, the Teamsters asked the Board to delay the representation election until at least 90 days after the date on which the unions received a list of the names and addresses of REA's employees (J.A. 142). On October 8, 1965, the Board denied that request for the reason that "Section 2, Ninth, Railway Labor Act [45 U.S.C. 152], requires prompt disposition of representation disputes" (J.A. 72–73), and advised both unions that the election would be conducted by mail ballots and that the ballots would be mailed to the employees about November 1, 1965, for return by December 1, 1965 (J.A. 189, 200). On October 15, 1965, the mediator, who had obtained a list of employees from REA, gave the unions the names and addresses of approximately 34,000 craft

[1] "J. A." refers to the Joint Appendix in the court of appeals, which is part of the record in this Court.

employees (J.A. 143, 159, 200). The Teamsters began mailing campaign material to these employees on October 19, 1965 (J.A. 153). On October 22 and 28, 1965, the mediator gave the unions additional lists of 900 and 1100 craft employees (J.A. 153–154, 161–162). The mediator began mailing ballots on October 31 (J.A. 154). The returned ballots were counted between December 1 and 5, 1965, with the following results (J.A. 176–177, 189):

Total eligible votes	85,560
Number of eligible votes cast	28,059
Votes for Railway Clerks	17,867
Votes for Teamsters	10,192
Number voting for another union	0
Number of void ballots	261

In accordance with those results, the Railway Clerks were certified by the Board as the craft's collective bargaining agent on December 10, 1965 (J.A. 181–183, 212).

This action was commenced by petitioner union and one of its members on October 13, 1965, to enjoin the Board from holding the election (J.A. 4–17). Prior to the mailing of ballots on October 31, 1965, the district court denied petitioners a preliminary injunction, and the court of appeals and Chief Justice Warren denied petitioners' applications to stay the election pending an appeal from the district court's denial (J.A. 187–188). In February 1966, the district court denied petitioners' motion for summary judgment setting aside the election and certification, and granted the motions for summary judgment filed by the Board and the intervening Railway Clerks (J.A. 109–110, 145–146, 207, 217). The court of appeals, recognizing "the well-established limitations upon judicial review

of employee representation proceedings conducted by the Board under the Railway Labor Act" (Pet. App. A 18), affirmed.

2. Petitioners urge that the Board unconstitutionally denied to the Teamsters and their supporters an effective opportunity to persuade REA's employees to choose the Teamsters rather than the Railway Clerks as their collective bargaining representative. Specifically, petitioners maintain that the Board was obliged to allow the Teamsters a longer period of time in which to disseminate campaign literature by mail (Pet. 12–14). However, as the court of appeals held, petitioners have not shown that the Board's conduct of the representation election infringed any constitutionally protected right. The Board in fact gave the Teamsters a substantial opportunity to campaign by various means, including the mails.

a. The Board in no way impeded the Teamsters in their efforts to communicate with REA's employees by mailing campaign literature to them, by making speeches, by picketing, or by visiting their homes. Under the Act, which, among other things, provides for the prompt resolution of representation disputes by election or "any other appropriate method," the Board's function is merely to ascertain a present fact: who are the employees' duly designated and authorized representatives. The Board issues no orders, has no enforcement functions, and, in general, cannot regulate a union's campaign tactics. See Section 2, Fourth and Ninth, 45 U.S.C. 152 (Pet. App. B 20–22); *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297, 304–305. Clearly the Board was not required, as petitioners in effect argue, to assist

the Teamsters' campaign efforts here by delaying the election. While petitioners urge that a more extended period for campaigning was desirable, Congress clearly did not think so since it provided in Section 2, Ninth, of the Railway Labor Act, as amended, that "within thirty days after the receipt of the invocation of its services," the Board should certify the designated representative. 45 U.S.C. 152 (Pet. App. B 21). That provision "places beyond reach the speed which the Act's framers thought an objective of the first order." *Railway Clerks* v. *Employees Assn.*, 380 U.S. 650, 668.[2]

b. The Board determined on September 8, 1965, that a representation election would be held about November 1, 1965, more than seven weeks later. Thus, the Teamsters had ample time to campaign. The Teamsters could and did mail campaign literature to most of the employees involved. Although the Board is not required to furnish lists of the employees' names and addresses to the unions, it nevertheless does so by obtaining lists from the carriers. The Board obviously cannot insure the completeness or accuracy of such lists. On October 15, 1965, the mediator supplied the Teamsters with a list of 34,000 employees; on October 22 and 28 supplemental lists were furnished. Given the large numbers involved, some erroneous addresses were inevitable. Petitioners do not suggest that the errors reflected any hostility or bias on the

[2] We do not read the petition here as attacking the constitutionality of Section 2, Ninth's thirty day time requirement. In any event, given the public interest protected by the Act—the expeditious resolution of representation disputes—there can be no doubt as to that provision's constitutionality. Cf. *Electrical Workers* v. *N.L.R.B.*, 341 U.S. 694, 704–705.

part of the Board. In any event, the same lists were used by the Board in mailing the ballots. If, as petitioners claim (Pet. 13), the Teamsters had only two days to reach by mail 1100 employees, eight days so to reach 900 others, and no chance (because of erroneous addresses) to reach 1200 others, these infirmities were mathematically insufficient to have altered the outcome of the election, even on the unlikely supposition that all of the employees voted for the Railway Clerks but would have been converted to the Teamsters. Cf. *Overnite Transportation Company* v. *N.L.R.B.*, 327 F. 2d 36, 41 (C.A. 4). In these circumstances, the Board certainly did not abuse its discretion, let alone infringe any constitutionally protected rights, by ordering the election to begin on October 31, 1965, in order to comply as closely as possible with the thirty day provision of Section 2, Ninth, of the Act. See *Railway Clerks* v. *Employees Assn.*, 380 U.S. 650, 667–668.

There is, we submit, no occasion for further review of the Board's proceedings by this Court. The petition for certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

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